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HALEY, CHISHOLM & MORRIS *v.* TRICE'S ADM'X.

March 16, 1916. Rehearing Denied April 3, 1916.

[88 S. E. 314.]

**1. Master and Servant (§ 296 (12)\*)—Injuries to Locomotive Driver—Action—Instruction.**—In suit for personal injuries sustained by a driver of a dinky engine used in railroad construction work when it collided with a steam shovel, where it appeared that plaintiff, who admitted his fault, was injured by running his engine backward into the shovel while looking for signals down the track in the direction whence he had come, instructions that there is a continuing duty on the part of an engineer hauling a train of cars over a track from time to time to look in the direction in which he is going, failure to observe which is negligence on his part, should have been given.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1189; Dec. Dig. § 296 (12).\* 9 Va.-W. Va. Enc. Dig. 703.]

**2. Master and Servant (§ 198 (1)\*)—"Fellow Servants."**—Where the driver of a dinky engine for railroad contractors was engaged in hauling earth from a steam shovel to a dump, the foreman of the steam shovel, who directed the driver as to placing cars and taking them away when loaded, in directing the placing of the shovel across the railroad track, where the engine collided with it, was the fellow servant of the driver, as was the dump foreman, who supervised the work at the dump, in giving him signals, since the mere execution of work planned by the master must be intrusted to workmen, and, where necessary, to groups or gangs, for which some one must be selected as foreman, who is not thereby a vice principal.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 493, 494; Dec. Dig. § 198 (1).\* 6 Va.-W. Va. Enc. Dig. 19.]

**3. Master and Servant (§ 278 (18)\*)—Injuries to Servant—Verdict Sufficiency of Evidence.**—In an action by the driver of a dinky engine against railroad contractors, his employers, for personal injuries, evidence held insufficient to sustain verdict for plaintiff.

[Ed. Note.—For other cases, see Master and Servant Cent. Dig. § 971; Dec. Dig. § 278 (18).\* 9 Va.-W. Va. Enc. Dig. 725.]

Error to Circuit Court, Prince George County.

Action by J. F. Trice against Haley, Chisholm & Morris. Upon plaintiff's death before trial, the suit was revived and prosecuted in the name of his administratrix. To review a judgment for plaintiff, defendants bring error. Reversed.

*D. Lawrence Groner*, of Norfolk, for plaintiff in error.

*O'Flaherty, Fulton & Byrd*, of Richmond, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.